



DO

U.S. Department of Justice

Immigration and Naturalization Service

Identification data deleted to
prevent clearly unwarranted
invasion of personal privacy.

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: LIN 02 034 58001 Office: NEBRASKA SERVICE CENTER

Date:

MAY 01 2002

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Alien Fiance(e) Pursuant to Section 101(a)(15)(K)
of the Immigration and Nationality Act, 8 U.S.C.
1101(a)(15)(K)

IN BEHALF OF PETITIONER: SELF-REPRESENTED

Public Copy

INSTRUCTIONS:

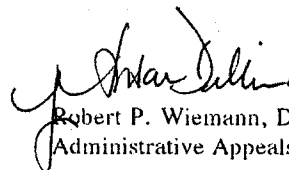
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a naturalized citizen of the United States who seeks to classify the beneficiary, a native and citizen of Romania, as the fiance(e) of a United States citizen pursuant to section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K).

The director denied the petition after determining that the petitioner and the beneficiary had not personally met within two years before the date of filing the petition, as required by section 214(d) of the Act. In reaching this conclusion, the director found that the petitioner's failure to comply with the statutory requirement was not the result of extreme hardship to the petitioner or unique circumstances.

Section 101(a)(15)(K) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(K), defines "fiance(e)" as:

An alien who is the fiancée or fiance of a citizen of the United States and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after entry....

Section 214(d) of the Act, 8 U.S.C. 1184(d), states in pertinent part that a fiance(e) petition:

shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties **have previously met in person within two years before the date of filing the petition**, have a bonafide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival...[emphasis added]

The Petition for Alien Fiance(e) (Form I-129F) was filed with the Service on October 16, 2001. Therefore, the petitioner and the beneficiary were required to have met during the period that began on October 16, 1999 and ended on October 16, 2001.

In response to Question #19 on the Form I-129F, the petitioner stated that she and the beneficiary had never met due to financial reasons. On appeal, the petitioner submits a statement and evidence that she met the beneficiary in Romania from December 23, 2001 through January 4, 2002. She requests that the petition be approved so that she and the beneficiary can marry in the United States where both of their families reside.

It is important to emphasize that the regulation at section 214.2(k)(2) requires the petitioner to prove that she last met the beneficiary no more than two years prior to the filing of the petition. In the instant case, the relevant two-year period is October 16, 1999 to October 16, 2001. According to the petitioner, the petitioner and beneficiary personally met from December 23, 2001 through January 4, 2002, more than two months after the filing date of the petition. Therefore, although the petitioner and beneficiary have now met in person, their last meeting did not occur within the relevant two-year period. The director's decision to deny the petition is therefore affirmed.

Pursuant to 8 C.F.R. 214.2(k)(2), the denial of the petition is without prejudice. Now that the petitioner and the beneficiary have met in person, the petitioner may file a new I-129F petition in the beneficiary's behalf so that the two-year period in which the parties are required to have met will apply. The petitioner should submit evidence that she and the beneficiary have met within the two-year period that immediately precedes the filing of a new petition. Without the submission of documentary evidence that clearly establishes that the petitioner and the beneficiary have met in person during the requisite two-year period, the petition may not be approved unless the director grants a waiver of such requirement.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.